

Exhibit 4

Exhibit 4

Pages 1-91

Exhibits 1-2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
C.A. No. 1:20-cv-10002

Emily Forsythe,

Plaintiff

vs.

Wayfair, LLC,

Defendant

Videotaped Deposition of Kory McKnight

Tuesday, July 21, 2020

Via Videoconference

-----Kristen C. Krakofsky-----

Court Reporter

VERITEXT

(800) 227-8440

Page 1

<p>1 employee because that's where she started and she 2 had a desk there?</p> <p>3 A. Yes. I mean, Emily lived, I believe, in 4 Kentucky, similar situation. She was originally, I 5 believe, in Boston and relocated to the Kentucky 6 area.</p> <p>7 Q. And were you also similarly working out of 8 Boston?</p> <p>9 A. Sorry. Can you repeat that?</p> <p>10 Q. Were you also -- were you similarly working 11 out of Boston at some point or at the beginning?</p> <p>12 A. Yes.</p> <p>13 Q. What was your first day at Wayfair?</p> <p>14 A. July 29th.</p> <p>15 Q. Of last year; right?</p> <p>16 A. Of 2019, sorry. Last year, 2019.</p> <p>17 Q. And were you working in Boston at some 18 point beginning in July?</p> <p>19 A. No.</p> <p>20 Q. Okay. So you've never actually -- do you 21 have a desk in Boston?</p> <p>22 A. I do not.</p> <p>23 Q. So you may have misunderstood my question. 24 You've never worked out of Boston? You never -- 25 (Multiple parties speaking.</p> <p style="text-align: right;">Page 6</p>	<p>1 Jet, so by default I became a Walmart.com employee 2 through Jet.com.</p> <p>3 Q. And I see you were at Jet.com from 4 October '16 to June 2019. Correct?</p> <p>5 A. Correct.</p> <p>6 Q. And when did Walmart purchase Jet.com?</p> <p>7 A. They purchased Jet.com -- well, it was 8 officially approved by the SEC in September of 2016.</p> <p>9 Q. And what were you doing with Jet.com?</p> <p>10 A. I was a senior director managing a team of 11 design engineers and project managers managing 12 pretty much all of the network equipment, all the 13 automation equipment across Walmart.com and Jet.com 14 fulfillment centers.</p> <p>15 Q. Was that, again, warehousing distribution 16 and fulfillment?</p> <p>17 A. And automation, yes, exactly.</p> <p>18 Q. Okay. And when you talk about automation, 19 what are you talking about?</p> <p>20 A. I'm talking specifically about carton 21 sortation, conveyance and sortation, moving product 22 from -- inbound, through the warehouse to put away, 23 from picking to shipping and sortation.</p> <p>24 Q. So you call it sortation, not sorting, huh?</p> <p>25 A. It's sortation, yeah. Sorters are the</p> <p style="text-align: right;">Page 8</p>
<p>1 Interruption by the court reporter.) 2 MR. GOODMAN: I'll restate the 3 question. 4 MR. GOODMAN: 5 Q. Mr. McKnight, you've really never lived in 6 Boston. You've never actually worked in Boston. 7 You traveled from Boston to work for Wayfair; 8 correct?</p> <p>9 A. I've worked -- you know, meetings, you 10 know, spent some time there, but I've never owned an 11 apartment in Boston.</p> <p>12 Q. Okay. How old are you today?</p> <p>13 MS. KAPPELMAN: What's the question, 14 Bob? We can't really hear you very well.</p> <p>15 BY MR. GOODMAN: 16 Q. How old are you, Mr. McKnight?</p> <p>17 A. I am 50.</p> <p>18 Q. Who is your immediate prior employer?</p> <p>19 A. Jet.com.</p> <p>20 Q. What does Jet.com do?</p> <p>21 A. They're an e-commerce player, just like 22 Amazon. They compete with Amazon.</p> <p>23 Q. They sell furnishings?</p> <p>24 A. Online, a variety of -- predominantly 25 grocery. But, you know, Walmart.com had purchased</p> <p style="text-align: right;">Page 7</p>	<p>1 physical devices that move product down certain 2 lanes, but it's sortation in general, is the term.</p> <p>3 Q. And you did that also at C&S Wholesale 4 Grocers; correct?</p> <p>5 A. Yes.</p> <p>6 Q. And for about six months, you worked at 7 Tesla; correct?</p> <p>8 A. Yes.</p> <p>9 Q. That was not a similar role, obviously. 10 What did you do at Tesla?</p> <p>11 A. No. At Tesla I was a program manager for 12 the Model 3.</p> <p>13 Q. And what did you do at United Technologies?</p> <p>14 A. I was a program manager in electric systems 15 on the commercial business side.</p> <p>16 Q. What kind of product?</p> <p>17 A. Power distribution systems. Secondary and 18 primary power distribution.</p> <p>19 Q. Under what circumstances did you leave 20 Walmart?</p> <p>21 A. I left Walmart to join Wayfair last year, 22 just about this time.</p> <p>23 Q. Were there any complaints against you at 24 Walmart?</p> <p>25 A. No.</p> <p style="text-align: right;">Page 9</p>

<p>1 Q. What prompted your leaving Walmart? 2 A. Sorry? 3 Q. What prompted your leaving Walmart? 4 A. I'm sorry. I didn't get that. 5 Q. What prompted your leaving Walmart? 6 A. My interest in Wayfair. And I started 7 talking to Wayfair in March or -- I think late March 8 of 2019. Just interested in the growth opportunity. 9 It's exciting. It kind of reminded me of what Jet 10 was like when I started. 11 Q. Was there anything critical in your 12 employment at Wayfair that led you to -- issues at 13 Walmart that led you to need to leave or want to 14 leave? 15 A. At Walmart? 16 Q. Yeah. Was there any criticism of any 17 aspect of your performance that led you to need to 18 leave or want to leave Walmart? 19 A. No. I left for Wayfair because it was a 20 great opportunity. 21 Q. You gave some Walmart documents to Emily 22 Forsythe; correct? 23 A. I'm not sure what document you're referring 24 to. 25 Q. Yeah. There were some documents that</p> <p style="text-align: right;">Page 10</p>	<p>1 Q. You resigned without a severance? 2 A. That's correct. 3 Q. And it's your testimony that there were no 4 complaints about you or against you at Walmart when 5 you were there? 6 MS. KAPPELMAN: Object to the form of 7 the question. 8 You can answer. 9 A. No. 10 Q. When did you first encounter Emily 11 Forsythe? 12 A. I met Emily for the first time on 13 August the 5th of 2019, which was the week after I 14 started. 15 Q. Is that when you -- that's when you met 16 her, you said? 17 A. Yes. 18 Q. Did you tell her how much money you made 19 the day you first met her? 20 A. No. 21 Q. Did you tell Emily that you would leave 22 Wayfair if the stock price dropped? 23 A. No. 24 Q. You're denying saying both of those things 25 or either of those things?</p> <p style="text-align: right;">Page 12</p>
<p>1 related to Walmart that you asked her to -- you sent 2 to her, and you asked her to keep them confidential. 3 Do you recall those documents? 4 A. So there's probably two documents. One was 5 just a risk document, and the other one was an 6 action tracker. Those were my documents that -- I 7 had developed those myself prior to Walmart. 8 Q. Action tracker and what was the other one? 9 A. Risk register. 10 Q. R-I-S-K register? 11 A. Yes. And those were documents that I had 12 developed before. 13 Q. Okay. And are you -- are you sure that 14 those were documents you sent to Emily, or are you 15 speculating those were the documents? 16 A. Those are documents I shared with my 17 implementation team since as well, so I believe 18 those are the documents. 19 Q. Do you remember sending any other documents 20 besides those two to Emily or to anybody else at 21 Wayfair? 22 A. No, I don't recall if there was something 23 else. 24 Q. So did you then resign from Walmart? 25 A. Yes.</p> <p style="text-align: right;">Page 11</p>	<p>1 MS. KAPPELMAN: Asked and answered. 2 You can answer again, Kory. 3 A. Yes, I deny that. 4 Q. Did you ask her the first time you met her 5 how much she made? 6 A. No. 7 I would have access to that anyway. 8 Q. And what level she was at? 9 A. She was a Level 5. 10 And I have access to that through Workday, 11 so I would never ask anyone what I -- information 12 that I'm privy to already. 13 Q. And your testimony is that she was a 14 Level 5 on the day you met her? 15 A. Yes. Until the day she resigned. 16 Q. Did you discuss with her possibly needing 17 her spot for somebody else? 18 A. No. 19 Q. You disclosed that you had three coworkers 20 from Walmart that may be interested in Wayfair on 21 the day you met her. You told that to her, didn't 22 you? 23 A. I told her that I had one that was 24 interested that I was talking to. 25 And so when I came on board, there was a</p> <p style="text-align: right;">Page 13</p>

<p>1 ton of opportunity. We were hiring. We had a 2 number of open roles, and I was basically told to 3 hire people that I know, references that I 4 personally worked with. 5 And when I met with Emily the second day, 6 we were together in Fort Wentworth. And we started 7 talking about the team and the workload, and I 8 mentioned to her that I knew someone that could be a 9 good fit for the team. 10 Q. And who was that? 11 A. That was Mike Thayer. 12 Q. And he's since come on; correct? 13 A. He came on after Emily had left the 14 company. 15 Q. Okay. But you actually mentioned two 16 people to her when you first met with her. 17 MS. KAPPELMAN: Object to the form of 18 the question. 19 You can answer, Kory. 20 A. Yeah. Mike is the only one that I brought 21 in that we interviewed, and he made it through the 22 interview process. 23 There were -- there was a candidate that 24 came later as an engineer. He came through the 25 process, wanted too much money. This was later on,</p> <p style="text-align: right;">Page 14</p>	<p>1 Q. So when she says you mentioned three people 2 at Walmart who might want to come over to Wayfair, 3 you're saying she's lying about that? 4 A. I'm saying I mentioned one person, and I 5 shared that resume with her. 6 She actually was -- she was a little put 7 off with the fact that he didn't go to a school that 8 she recognized, although he had 20-plus years' of 9 work experience, which I thought was a little bit 10 strange, but I just let that go. 11 Q. Okay. So she looked at his resume at the 12 time you handed it to her? 13 A. Yes. 14 Q. And then you had a discussion about that 15 resume at the time? 16 A. I did, yeah. She made some comments that 17 she didn't recognize the school. And I didn't think 18 it was very applicable, but we never debated it, 19 discussed it at that point. 20 Q. Did you recognize the school? 21 A. Bishop University. 22 I mean, I'm originally from Canada, so I 23 wouldn't recognize a lot of schools, other than the 24 most popular schools here. 25 Q. You're thinking it was in Canada?</p> <p style="text-align: right;">Page 16</p>
<p>1 after Emily had left the company as well, and we 2 never extended -- we never met his expectations. 3 Q. Who was that? 4 A. This was Jon Cortellacci. 5 Q. Okay. Is that another person you talked 6 with her about? 7 A. No, I never spoke to her about Jon. 8 Q. You're saying you spoke to her about 9 Thayer. Did you -- 10 A. Yes. 11 Q. Did you identify by name or as one of the 12 three male coworkers anybody else besides Thayer? 13 MS. KAPPELMAN: Object to the form of 14 the question. Object to the form of the question. 15 Mischaracterizes his prior testimony. He didn't say 16 he identified three people in that conversation. He 17 said he identified one. 18 You can answer, Kory. 19 BY MR. GOODMAN: 20 Q. Did you identify Mr. Thayer by name? 21 A. I did. In fact, I shared his resume with 22 Emily as well. 23 Q. Did you identify anybody else either by 24 name or as coworkers of Walmart? 25 A. I did not.</p> <p style="text-align: right;">Page 15</p>	<p>1 A. Sorry. Can you repeat that? 2 Q. You think it was in Canada? 3 A. No, no, no. I said I'm originally from 4 Canada, and I wouldn't recognize many of the U.S. 5 schools, as not being born here and not spending, 6 you know, the first 26, 29 years of my life here, 7 so... 8 Q. So you didn't recognize it either? 9 A. I did not, no. 10 And I knew -- I only knew Mike, actually, 11 for a short amount of time before that. But he was 12 interested, and I had spoken to him about coming 13 over to Wayfair. 14 Q. Did you talk with Emily in September of 15 2019 about having had a female person on a team in 16 one of your jobs who had complained and then later 17 resigned? 18 A. No. 19 Q. So you never talked with Emily Forsythe 20 about a female employee on one of your teams at one 21 of your employers? 22 A. I don't recall, no. If I -- I may have 23 spoken to her about some team members in the past, 24 but I don't recall that specifically. 25 Q. Do you recall -- did you speak with Emily</p> <p style="text-align: right;">Page 17</p>

<p>1 about a team member -- a female team member under 2 you at some point who complained and then resigning? 3 A. No. 4 Q. In your position as a supervisor at various 5 companies, was there anybody besides Emily who made 6 a complaint of sexual harassment? 7 MS. KAPPELMAN: Against Kory or 8 against anyone? 9 BY MR. GOODMAN: 10 Q. Against someone at the company that you 11 had -- as supervisor, you had a responsibility. 12 A. No, never. Not in my 25 years of working. 13 I've never been involved in a sexual harassment case 14 of any kind. 15 Q. Until Emily's; right? 16 A. Correct. 17 Q. Have you been involved with any others 18 since? 19 MS. KAPPELMAN: Object to the form of 20 the question. 21 I'm going to direct you not to answer 22 as it's not relevant to this case. 23 BY MR. GOODMAN: 24 Q. Do you, at work, refer to women from time 25 to time as girls?</p> <p style="text-align: right;">Page 18</p>	<p>1 about -- formally complain about anything, whether 2 or not it was sexual discrimination or sexual 3 harassment? 4 MS. KAPPELMAN: I'm going to object to 5 the form. 6 Can I just make it clear? Are you 7 asking if he's ever had a female subordinate who 8 complained about anything? 9 MR. GOODMAN: No. 10 MS. KAPPELMAN: Okay. Then I must not 11 have understood the question. Can you rephrase it? 12 BY MR. GOODMAN: 13 Q. Yeah. The statement that's attributed to 14 you made a big deal complaining about something -- 15 have you ever had, prior to Emily, a female 16 subordinate who made a big deal complaining about 17 something to you? 18 A. No. 19 Q. Did you have a conversation -- do you 20 recall the conversation on September 10, 2019, with 21 Emily? 22 MS. KAPPELMAN: What conversation, 23 Bob? Any conversation on September 10, 2019? 24 BY MR. GOODMAN: 25 Q. Do you recall a conversation on</p> <p style="text-align: right;">Page 20</p>
<p>1 A. I refer to people as associates, 2 colleagues, employees. I believe that would be -- 3 no. That would be like me referring to our 4 associates as boys. 5 Q. I'll share the recollection with you, and 6 you can either acknowledge or -- admit or deny this. 7 A. Sure. 8 Q. Emily recalls that you said, "I used to 9 have a girl like you on my team, but she made a big 10 deal complaining. And you know what happened to 11 her? She resigned." 12 A. That is not something that I said. That 13 just seems a little absurd to me, but okay. I have 14 not said that, no. 15 Q. What's absurd about it? 16 A. To what end would I be -- what is the 17 benefit to me if -- by making a statement like that? 18 I just -- I don't understand that, so -- that's not 19 something I would say. 20 Q. Prior to August 10, 2019, had you ever had 21 a female subordinate who complained about 22 anything -- about any discrimination, even if it was 23 not a complaint of sexual harassment? 24 A. No. 25 Q. Have you had a female subordinate complain</p> <p style="text-align: right;">Page 19</p>	<p>1 September 10, 2019, with Emily? Yes or no? 2 MS. KAPPELMAN: Kory, do you recall a 3 specific conversation that's tied to September 10, 4 2019? 5 A. No, no. I've had many conversations with 6 Emily, so I'm not sure which one you're referring 7 to. 8 Q. Well, there was one that she made a record 9 of in an email to you and Mr. Witte; correct? 10 A. That was not -- I believe that was 11 September the 17th. 12 Q. Okay. And so you do recall September 17th. 13 You just don't, as we sit here, recall 14 September 10th; correct? 15 A. Correct. I remember September 17th because 16 she had sent a document that was her attempt to 17 restate the conversation. 18 Q. Did you ever respond to that email in 19 writing? 20 A. I do not believe I did, no. 21 I did speak to Matt. He was in the room 22 adjacent to me. This was the last conversation I 23 believe I had with Emily. 24 Q. Can you see that email on your screen? 25 A. Yes, I can.</p> <p style="text-align: right;">Page 21</p>

<p>1 Q. The email that is marked Wayfair -- that is 2 Wayfair 1265 to 1266, which I'll mark as McKnight 3 Exhibit 1, that's the email you were talking about; 4 correct? 5 (McKnight Exhibit 1, email dated 6 September 17, 2019, from Ms. Forsythe to 7 Mr. McKnight and Mr. Witte, Bates-stamped Wayfair 8 1265 to 1266, marked for identification.) 9 MS. KAPPELMAN: Just -- can you go to 10 the top for me for one minute, Bob? 11 For the record, it's a September 17, 12 2019, email from Emily Forsythe to Kory McKnight and 13 Matt Witte. 14 BY MR. GOODMAN: 15 Q. That's the one you were just identifying; 16 correct? 17 A. Yes, it is. 18 Q. And you never addressed this in writing 19 with her? 20 A. She's the one that sent it to me, so -- 21 Q. You never responded to her or refuted it? 22 A. No. I spoke to Matt immediately after 23 this. He was in the room adjacent when she came in 24 and attacked me verbally and accused me of keeping 25 her uninformed and talking to her team members after</p> <p style="text-align: right;">Page 22</p>	<p>1 Thayer actually -- you know, his name was actually 2 even mentioned, to be honest. 3 Q. Okay. 4 A. He was looking at -- 5 MR. GOODMAN: Object to 6 responsiveness. 7 BY MR. GOODMAN: 8 Q. This email records a discussion with you 9 that, in large part, dealt with her concerns that 10 you were bypassing her improperly; correct? 11 MS. KAPPELMAN: Objection. The 12 document speaks for itself as to what it records. 13 But you can reflect your recollection. 14 A. Yeah. I mean, so the interesting thing 15 about this is I had followed up with her -- one of 16 her project managers regarding a schedule that Emily 17 was not willing to share with the site director. I 18 was understanding the details that she was working 19 on in terms of the absolute dates. 20 I ran into one of her other project 21 managers on-site in Erlanger for the first time, and 22 he took me on a short tour of that site. That was 23 not planned. 24 When Emily found out that I was talking to 25 Kelly, she was in Hebron at the time, and she asked</p> <p style="text-align: right;">Page 24</p>
<p>1 we've had multiple discussions around the fact that 2 she's busy and I'm going to be talking to vendors 3 like I've done in my past and I continue to do today 4 as well. If that means I have to speak to her 5 teammates directly, that's just -- that's the normal 6 part of the business that we're in. 7 Q. And you talk about her concern that you 8 were bypassing her and -- you talk about her 9 concerns that you were bypassing her; correct? 10 A. She brought that up. She accused me of 11 intentionally keeping her out of the loop with her 12 teammates. 13 Q. And verbally you had some discussion with 14 her about that? 15 A. I had several discussions before where she 16 was telling me, "Do not talk to my vendors, do not 17 talk to my team members without me directly 18 involved." 19 And I explained to her on a few occasions 20 that, "I'm sorry, Emily, to disagree with that, but 21 this is, you know, how we're going to -- we conduct 22 business when things are as busy as they are." 23 That's another reason why we were looking 24 to add another team member to the team, to take -- 25 to split the work into two regions. That's why Mike</p> <p style="text-align: right;">Page 23</p>	<p>1 that I speak to her in person and basically demanded 2 that I, you know, not talk to her team directly. 3 And within 10 minutes, she was in Erlanger, which is 4 at least a 10-minute drive, knocking on the 5 conference room door that I was sitting in. She 6 came in and just, you know -- 7 Q. And her conversation -- her email records 8 that conversation that you just testified to; right? 9 MS. KAPPELMAN: Object to the form. 10 BY MR. GOODMAN: 11 Q. You may disagree with what she said, but 12 that was her characterization of that conversation, 13 the one where she drove to Erlanger to discuss it; 14 correct? 15 A. Yes. This is her version of the -- 16 Q. I understand. 17 And then -- 18 MS. KAPPELMAN: I'm going to ask, Bob, 19 to completely finish his question before you start 20 to answer, Kory. And I'm going to ask Kory to 21 completely finish your answer before Bob cuts you 22 off. That way we'll have a clear transcript, and 23 I'll get a chance to object if I need to. Thank 24 you. 25</p> <p style="text-align: right;">Page 25</p>

<p>1 BY MR. GOODMAN: 2 Q. If you look on the second page of that, 3 there's a paragraph that begins, you changed the 4 subject in that -- "You changed the subject at this 5 point in the conversation." Do you see that? 6 A. Yes. 7 Q. And it records some discussion you had 8 about install schedule and Vic, a person named Vic. 9 Do you see that? 10 A. Yes. 11 Q. Who is Vic? 12 A. Vic was the regional director for the 13 West Coast. 14 Q. What's his last name? 15 A. He's no longer with the company. 16 MS. KAPPELMAN: If you don't remember, 17 you don't remember. 18 A. Davis, I think. Vic Davis. 19 Q. All right. In the next to last paragraph, 20 it says, "I then stated you were changing the 21 subject, that this conversation was about how I 22 needed you to not cut me out of my team." 23 Is that correct, that at one point she 24 thought -- she brought up this issue of bypassing 25 her and that you had changed the subject? Or she</p> <p style="text-align: right;">Page 26</p>	<p>1 And also, I told her that, you know, we 2 needed to have a sit-down with our talent management 3 team to determine what the next steps were. 4 This was -- she completely took me off 5 guard by her -- the way that she, again, I believe, 6 in my view, attacked me and accused me of something 7 that was, quite frankly, not the case. And I -- 8 (Multiple parties speaking.) 9 Q. Sorry. Go ahead if you need to. 10 Did you ever reduce to writing any 11 criticisms of her from you or others in a 12 communication to her? 13 A. So I was having almost daily conversations 14 with my supervisor at the time, just explaining some 15 of the challenges. Matt was also getting calls from 16 other leaders, including the regional directors, on 17 her behavior. 18 So I was consulting with Matt quite 19 frequently. We had some communication through email 20 back and forth, just about, you know, getting 21 another person on the team to help with the 22 workload, which I felt could help Emily take some of 23 the stress off and some of the pressure. And that 24 was really the goal of expanding the team and the 25 organization to align with the operation, because</p> <p style="text-align: right;">Page 28</p>
<p>1 writes that you changed the subject slightly? 2 A. So Emily was berating. She was turning 3 red. She berated me. She was completely 4 disrespectful and out of line. I was completely 5 shocked with her approach and accusations. I sat 6 back, quietly listened to her, you know, accuse me 7 of keeping her uninformed. That's when I 8 interjected. 9 She has not been forthcoming in terms of 10 sharing information. She's not been collaborative. 11 She's been condescending to many of her peers in 12 many other interactions she had. 13 I was really quite shocked at her, how she 14 basically came and attacked me, that I was a little 15 bit taken aback and had to sit and listen to what 16 she was saying before I interjected and brought up a 17 couple of things. You know, one of them being 18 feedback was not positive. Not the first time I had 19 that discussion with her. I had been coaching her 20 for a few weeks. 21 And for the record, I only worked with 22 Emily for seven weeks, so it's a very short amount 23 of time that I actually had interaction with her. 24 But I had a lot of challenges with her interactions 25 with others. I brought that up.</p> <p style="text-align: right;">Page 27</p>	<p>1 they're split into regions. So we were following 2 suit with that approach. 3 I thought that would help Emily, but she 4 didn't really take very well to the criticisms and 5 to the coaching, even though we would have many 6 discussions around how she can approach things 7 differently. And she would agree with me, and she 8 would go and do, quite often, the opposite. 9 MR. GOODMAN: Object to 10 responsiveness. 11 BY MR. GOODMAN: 12 Q. My question was whether you had reduced to 13 writing, in any communication with her, your 14 criticisms of her or the criticisms of others. 15 MS. KAPPELMAN: Just so you know, 16 Kory, when Bob doesn't like your response, he says, 17 "Object to responsiveness," which means nothing. 18 You'll be able to testify at trial to what you 19 believe and what you know. 20 MR. GOODMAN: The judge can decide 21 whether an answer you gave -- if we only use your 22 deposition, the judge can decide whether the jury 23 hears your -- 24 MS. KAPPELMAN: We're not going to 25 just use his deposition. Kory's going to be there</p> <p style="text-align: right;">Page 29</p>

<p>1 to testify about every decision that was made, and 2 all of his deposition testimony will come in. 3 So that's why he does that, Kory. But 4 feel free to keep answering and telling your truth. 5 MR. GOODMAN: Object to sidebar and 6 coaching. 7 BY MR. GOODMAN: 8 Q. In any case, did you ever reduce to writing 9 in a communication with Emily your criticisms of 10 her? 11 A. There could have been coaching 12 opportunities that were back and forth between her 13 and I -- 14 Q. You don't remember -- 15 A. -- which is no different than -- 16 MS. KAPPELMAN: Let him finish his 17 answer. 18 Which is no different than what, Kory? 19 A. It's no different than if someone -- 20 another team member on the team was having some 21 challenges with people, with interactions, that I 22 would offer the same level of coaching and 23 understanding and support. 24 Q. I understand that. But did you put in 25 writing your criticisms of Emily in a communication</p> <p style="text-align: right;">Page 30</p>	<p>1 Q. All right. And you understood that she was 2 under stress with all the work at the time? You've 3 already indicated that; right? 4 A. I think everybody is under stress when 5 you're delivering multimillion-dollar projects that 6 are behind schedule. It's just part of the nature 7 of the business. 8 Q. And you also understood, as of mid-August, 9 that she was also under stress because of conduct of 10 which she complained in her August 14th formal 11 complaint; correct? 12 A. My involvement in that, the complaint, was 13 to discuss with Matt the need to escalate it to 14 talent management. They took the case and did the 15 investigation. I was completely uninvolved in that. 16 (Multiple parties speaking.) 17 MS. KAPPELMAN: Let him finish, 18 please, Bob, really, before you interrupt him. 19 Go ahead, Kory. 20 A. I was just going to say that I didn't know 21 when the case would end. I didn't know the process. 22 I wasn't asking the questions. I was dealing with 23 the workload that was in front of us. 24 And Emily seemed to be focused on work. I 25 didn't get the sense that the case was a major</p> <p style="text-align: right;">Page 32</p>
<p>1 with her at any time? 2 A. Again, I think what I -- if I put something 3 in writing, it was, you know, in her best interest. 4 And I look at that more as a coaching opportunity. 5 Q. And it was -- if you put something in 6 writing to her, it was the same kind of thing you 7 would do for any employee; correct? 8 A. If the employee was having the same number 9 of challenges with interactions with other folks, 10 absolutely. 11 Q. Okay. Did you, in a written communication 12 with anybody besides Emily, put your own criticisms 13 of Emily? 14 A. There was dialogue verbally and in -- 15 between correspondence or email with myself and Matt 16 that could be construed as criticisms. 17 Q. Okay. 18 A. I'm sure there were. Every day was 19 bringing new challenges. And, again, I would spend 20 time having the discussion and the dialogue with 21 Emily. She tended to be responsive, and she was 22 understanding of the circumstances. And we would 23 typically align and agree on next steps and path 24 forward, and then she would often do the opposite of 25 what we would discuss.</p> <p style="text-align: right;">Page 31</p>	<p>1 distraction for her. 2 Q. Well, did you -- did you read the 14-page 3 summary of events? 4 A. 14-page summary of -- 5 Q. Did you read the complaint that's -- 6 chronology of events that constitutes the formal 7 complaint? 8 A. Yes. 9 Q. Okay. And the -- it focused, to some 10 degree, on the unconsented touching by Mr. McDole 11 and other conduct of Mr. McDole; correct? 12 A. I read that, yes. 13 Q. And reading it, you understood that there 14 was stress from that direction in Emily's work life; 15 correct? 16 A. I can only surmise. 17 Q. Okay. I mean, if that was happening to 18 you, if you had been touched without your consent 19 or, in your view, bullied by another employee, that 20 would put you under some stress, would it not? 21 A. If that were, in fact, true, then I would 22 agree with that. 23 Q. So you think she -- are you saying that you 24 think Emily was lying about Mr. McDole touching her 25 without her consent on the three occasions that were</p> <p style="text-align: right;">Page 33</p>

<p>1 highlighted in that memo?</p> <p>2 A. I never said that, and I have no opinion of</p> <p>3 it, other than to escalate that and take her word</p> <p>4 that the accusations happened. And it was up to the</p> <p>5 talent management team to investigate it fully.</p> <p>6 Q. Do you think -- do you think a woman has to</p> <p>7 have a witness to an incident of unconsented</p> <p>8 touching or the allegation of unconsented touching</p> <p>9 to even be regarded as being true?</p> <p>10 A. I don't.</p> <p>11 Q. Okay. There's a reference, in looking at</p> <p>12 the last paragraph of this 1265 document, Exhibit 1;</p> <p>13 where you ask her to mend things with Frances, the</p> <p>14 employee named Frances.</p> <p>15 A. Yeah. She had an altercation with Frances</p> <p>16 dating back to August the 27th.</p> <p>17 (Multiple parties speaking.)</p> <p>18 MS. KAPPELMAN: Let him finish,</p> <p>19 please, Bob. Let him finish his answer. Don't</p> <p>20 interrupt him.</p> <p>21 Go ahead, Kory.</p> <p>22 A. Yeah. So there was a -- there was a</p> <p>23 confrontation. I think there was a little bit of</p> <p>24 history between the two ladies dating back sometime</p> <p>25 prior. There was not a lot of, you know,</p> <p style="text-align: right;">Page 34</p>	<p>1 to last paragraph that says, "This is not the case,</p> <p>2 and Frances and I have a good working relationship."</p> <p>3 Did you make any effort with Frances to</p> <p>4 verify that Emily was correct that any mending of --</p> <p>5 mending of the relationship had occurred and that</p> <p>6 she and Emily then had a good working relationship?</p> <p>7 A. At that point, we moved on. It was an</p> <p>8 incident. I think ultimately in the end there</p> <p>9 was -- Frances provided some form of commentary to</p> <p>10 Matt at his request in terms of their interactions,</p> <p>11 so that would have been provided to the talent</p> <p>12 management team.</p> <p>13 Q. Did you make any effort individually or, to</p> <p>14 your knowledge, Mr. Witte make any effort to verify</p> <p>15 the statement, "This is not the case, and Frances</p> <p>16 and I have a good working relationship," as of the</p> <p>17 date of this email?</p> <p>18 A. Well, I saw the Slack messages, and that's</p> <p>19 contrary to what Emily had written.</p> <p>20 Q. And the email and the Slack messages were</p> <p>21 dated what day?</p> <p>22 A. This would have been August the 27th.</p> <p>23 Q. Okay. And this email to you was dated</p> <p>24 September 17th, so that was three weeks later.</p> <p>25 So, again, did you make any effort to</p> <p style="text-align: right;">Page 36</p>
<p>1 collaboration. And apparently Emily said or did</p> <p>2 something to upset Frances, that she escalated that</p> <p>3 to her manager who called Matt and then Matt called</p> <p>4 myself.</p> <p>5 I spoke to Emily and asked that she</p> <p>6 politely reach out and talk to Frances, apologize</p> <p>7 for upsetting her, that it was unintentional.</p> <p>8 Emily was a little bit frustrated with</p> <p>9 Frances because she hadn't responded to her in the</p> <p>10 past at other meetings.</p> <p>11 Ultimately, Emily agreed that was the right</p> <p>12 thing to do. And then I saw some Slack messages</p> <p>13 shortly after where she went after Frances and</p> <p>14 basically said, "How dare you talk to my manager."</p> <p>15 And that was completely unprofessional.</p> <p>16 So very different outcome versus what we</p> <p>17 discussed as far as how to handle that moving</p> <p>18 forward.</p> <p>19 Q. After you got this email, did you make any</p> <p>20 effort to verify the truth of the statement, "This</p> <p>21 is not the case, and Frances and I have a good</p> <p>22 relationship," as of this date in September?</p> <p>23 A. Sorry. Are you asking me a question</p> <p>24 specific to that paragraph?</p> <p>25 Q. There's parenthetical language in the next</p> <p style="text-align: right;">Page 35</p>	<p>1 verify that three weeks later she had spoken to</p> <p>2 Ms. -- she had spoken to Frances and they had a good</p> <p>3 working relationship? Did you try to verify that</p> <p>4 was true?</p> <p>5 A. So there were a number of complaints from</p> <p>6 other leaders that, quite honestly, kept me very</p> <p>7 busy, that I didn't have to go back and circle with</p> <p>8 Frances because there was a crisis almost at every</p> <p>9 turn, it seemed.</p> <p>10 Q. So the short answer is no; right? You</p> <p>11 didn't go back to Frances and try to verify the</p> <p>12 status of the relationship as of September 17th;</p> <p>13 correct?</p> <p>14 A. Yeah. So from my understanding, Frances</p> <p>15 had a problem with Emily.</p> <p>16 Q. Sir, you did not go back after</p> <p>17 September 17th and try to verify the truth of the</p> <p>18 statement by Ms. Forsythe that she had mended things</p> <p>19 and that they had a good working relationship as of</p> <p>20 September 17th; correct?</p> <p>21 A. After -- this was the last time I spoke to</p> <p>22 Emily, September 17th.</p> <p>23 Q. And you didn't speak to Frances about her</p> <p>24 statement in the email after September 17th either,</p> <p>25 did you?</p> <p style="text-align: right;">Page 37</p>

<p>1 A. Matt spoke to Frances.</p> <p>2 Q. And so was he saying that -- did he tell</p> <p>3 you that he was trying to verify the truth of</p> <p>4 Emily's statement in this email about Frances?</p> <p>5 A. Matt was collecting information from other</p> <p>6 leaders that had similar challenges with their</p> <p>7 interactions.</p> <p>8 Q. Is the short answer then no, that he didn't</p> <p>9 tell you that that's what he was trying to do by</p> <p>10 talking to her?</p> <p>11 MS. KAPPELMAN: Object to the form of</p> <p>12 the question.</p> <p>13 Kory, go ahead and answer.</p> <p>14 A. He didn't say specifically there. But</p> <p>15 there were several other peers and senior leaders</p> <p>16 that had provided statements that are consistent</p> <p>17 with the unprofessional, condescending,</p> <p>18 unprofessional, you know, approach Emily has taken.</p> <p>19 Q. If you know, how many of the statements</p> <p>20 you're referring to were made without a request</p> <p>21 being made for those written statements to be</p> <p>22 prepared?</p> <p>23 A. I'm not quite sure I understand the</p> <p>24 question, other than the fact that some of the</p> <p>25 leaders were already providing feedback to Matt and</p> <p style="text-align: right;">Page 38</p>	<p>1 didn't work directly with you. Is that what you're</p> <p>2 saying?</p> <p>3 A. I did not know Arron Velarde until I was</p> <p>4 working at Wayfair.</p> <p>5 Q. Is there anybody who you worked with at</p> <p>6 Tesla who was also working at Wayfair after you got</p> <p>7 to Wayfair?</p> <p>8 A. No.</p> <p>9 Q. So no former coemployee of Tesla worked</p> <p>10 with you after you came to Wayfair? Just a former</p> <p>11 employee -- just a former coemployee of Walmart?</p> <p>12 MS. KAPPELMAN: Asked and answered.</p> <p>13 You can answer it a third time.</p> <p>14 A. No.</p> <p>15 Q. Did you tell Emily, as she states you</p> <p>16 stated, "You don't think I'm a good fit for the</p> <p>17 team" -- (Indecipherable).</p> <p>18 MS. KAPPELMAN: You broke up, Bob.</p> <p>19 But I think he's trying to ask you</p> <p>20 about the last two sentences of that big paragraph,</p> <p>21 "You stated that you don't think I'm a good fit,"</p> <p>22 and forward. Did you tell her that?</p> <p>23 A. Yeah. I don't recall specifically saying</p> <p>24 "good fit."</p> <p>25 What I recall saying was that -- very</p> <p style="text-align: right;">Page 40</p>
<p>1 I.</p> <p>2 Q. Whose written statements are you talking</p> <p>3 about?</p> <p>4 A. There was written statements from Frances</p> <p>5 herself; Arron Velarde, who's a site director; his</p> <p>6 boss, Victor Davis; Brian McCormick, who's a</p> <p>7 regional director; Melissa Malik, who's a regional</p> <p>8 director.</p> <p>9 There could be some more, but that's the</p> <p>10 few off the top of my head.</p> <p>11 Q. Were all of those requested to be prepared</p> <p>12 either requested by you or Mr. Witte?</p> <p>13 A. Some of those were unsolicited.</p> <p>14 Q. Which of those were unsolicited?</p> <p>15 A. Arron's was unsolicited. Mel had provided</p> <p>16 feedback on several occasions prior. I believe</p> <p>17 Brian's was requested by Matt. And Victor Davis's</p> <p>18 was requested by Matt.</p> <p>19 Q. And who is Mel?</p> <p>20 A. Melissa Malik is one of the regional</p> <p>21 directors of the operation.</p> <p>22 Q. Did you have a prior work relationship with</p> <p>23 Mr. Velarde?</p> <p>24 A. No.</p> <p>25 Q. So Mr. Velarde worked at Tesla, but he</p> <p style="text-align: right;">Page 39</p>	<p>1 pointedly that I can't do this any longer, like</p> <p>2 continue to go on like this. "This is not working,"</p> <p>3 is what I specifically said to her. And I said,</p> <p>4 "The next steps are we're going to have a</p> <p>5 sit-down -- a formal sit-down with the talent</p> <p>6 management team to determine next steps." That is</p> <p>7 what I said.</p> <p>8 Q. And by talent management team, next steps,</p> <p>9 you meant whether or not she was terminated?</p> <p>10 A. No. Definitely not. I can't make that</p> <p>11 decision. That is a talent management decision</p> <p>12 based on the facts that, you know, are presented to</p> <p>13 them.</p> <p>14 Q. What were the possible next steps, sir?</p> <p>15 A. Possible next steps were to review the</p> <p>16 documentation on the behaviors that I had been</p> <p>17 documenting, as well as what Matt had documented, to</p> <p>18 determine the next steps. And the next steps would</p> <p>19 be ultimately reviewed and decided upon with the</p> <p>20 talent management team.</p> <p>21 Q. Yeah. But that -- that's just talking</p> <p>22 about talking. What about actual steps? What were</p> <p>23 the steps that you were contemplating?</p> <p>24 A. I can't take steps against anyone. That is</p> <p>25 a talent management --</p> <p style="text-align: right;">Page 41</p>

<p>1 Q. What were the steps --</p> <p>2 MS. KAPPELMAN: You've got to let him</p> <p>3 finish his answer, Bob. Seriously, I'm going to</p> <p>4 enforce this because the guy has a right to finish</p> <p>5 his testimony and his answer.</p> <p>6 So, Kory, you can't what? You started</p> <p>7 to say "I can't take."</p> <p>8 A. I can't -- I mean, the next steps were to</p> <p>9 have a sit-down to review the documented</p> <p>10 interactions that were, you know, problematic. That</p> <p>11 was the next steps.</p> <p>12 Beyond that was the responsibility and</p> <p>13 would be determined by the talent management team.</p> <p>14 If they wanted to take any action from that point,</p> <p>15 that is on the talent team.</p> <p>16 Unfortunately, we didn't get to that point</p> <p>17 before Emily resigned the following week.</p> <p>18 MR. GOODMAN: Object to</p> <p>19 responsiveness.</p> <p>20 BY MR. GOODMAN:</p> <p>21 Q. You were not in any meeting at which she</p> <p>22 allegedly resigned, were you?</p> <p>23 A. I was informed after the fact.</p> <p>24 Q. Okay. And what date were you informed?</p> <p>25 A. I believe it was Tuesday morning, which</p> <p style="text-align: right;">Page 42</p>	<p>1 in that discussion.</p> <p>2 Q. To be clear, you were told that -- you know</p> <p>3 that somebody told her not to go to Atlanta;</p> <p>4 correct?</p> <p>5 A. I was informed after -- I believe it was</p> <p>6 Tuesday morning -- that she's no longer with the</p> <p>7 company and that she resigned.</p> <p>8 Q. Who informed you of that?</p> <p>9 A. That would have been talent management.</p> <p>10 Q. Okay. Who in talent management?</p> <p>11 A. That would have been Mike Behrendt.</p> <p>12 (Clarification requested by the court</p> <p>13 reporter.)</p> <p>14 MR. GOODMAN: B-E-H-R-E-N-D-T.</p> <p>15 BY MR. GOODMAN:</p> <p>16 Q. And do you know somebody named Aaron</p> <p>17 Berland?</p> <p>18 A. Sorry. What was the name?</p> <p>19 Q. Aaron. First name A-A-R-O-N. Last name</p> <p>20 begins with a B. Did you know anybody fitting that</p> <p>21 description at Tesla?</p> <p>22 A. No.</p> <p>23 Q. And, again, nobody who ever worked at Tesla</p> <p>24 also worked at Wayfair when you were there?</p> <p>25 MS. KAPPELMAN: Object to the form of</p> <p style="text-align: right;">Page 44</p>
<p>1 would have been the 24th or the 25th.</p> <p>2 Q. What date were you told that she, quote,</p> <p>3 resigned?</p> <p>4 A. I believe the 24th or the 25th of</p> <p>5 September. It was the week after the last</p> <p>6 interaction.</p> <p>7 Q. She took a PTO day off on the 20th;</p> <p>8 correct?</p> <p>9 A. Yes. I recall that, yes.</p> <p>10 Q. And she gave you notice of that; correct?</p> <p>11 A. Correct.</p> <p>12 Q. And then she came -- she was at work on the</p> <p>13 23rd, that Monday; correct?</p> <p>14 A. I was not in Kentucky. I recall that she</p> <p>15 was traveling to Atlanta.</p> <p>16 Q. And she was going to travel to Atlanta on</p> <p>17 Tuesday; correct?</p> <p>18 A. Yes. I believe that's correct, yup.</p> <p>19 Q. And she was told not to go to Atlanta;</p> <p>20 right?</p> <p>21 A. Not by myself.</p> <p>22 Q. By somebody; correct? Somebody said, "Do</p> <p>23 not go to Atlanta; you're fired"?</p> <p>24 A. I believe so.</p> <p>25 I can't say that, no. I was not involved</p> <p style="text-align: right;">Page 43</p>	<p>1 the question.</p> <p>2 You can answer, Kory.</p> <p>3 A. I was at Tesla for six or seven months in</p> <p>4 2016. No, I was not -- I didn't know anyone at</p> <p>5 Wayfair that had worked at Tesla when I was at</p> <p>6 Tesla.</p> <p>7 Q. Were you friends at Wayfair with anybody</p> <p>8 named Arron?</p> <p>9 A. At Tesla?</p> <p>10 Q. No. At Wayfair. Is there anybody in your</p> <p>11 area named -- I think it's A-R-R-O-N, who you are</p> <p>12 friendly with at Wayfair?</p> <p>13 A. Yeah. Well, the only Arron is Arron</p> <p>14 Velarde that I knew when I was working at Wayfair.</p> <p>15 Q. Okay. And had you ever worked with him</p> <p>16 before you got to Wayfair?</p> <p>17 MS. KAPPELMAN: Asked and answered</p> <p>18 four times.</p> <p>19 You can answer again, Kory.</p> <p>20 A. No.</p> <p>21 Q. Did you -- were you friendly with Arron</p> <p>22 outside work at Wayfair?</p> <p>23 A. Sorry. Can you repeat that question?</p> <p>24 Q. Were you friendly with him outside work at</p> <p>25 Wayfair?</p> <p style="text-align: right;">Page 45</p>

<p>1 A. No. I had never met him in person before 2 Emily resigned. 3 Q. Again, you've never seen a resignation 4 letter; correct? 5 A. I'm going by what I was informed of. 6 Q. And you were not party to any conversation 7 involving any resignation; correct? 8 A. Only after the fact. 9 Q. Have you had any discrimination and 10 harassment retaliation training at Wayfair? 11 A. Yes. 12 Q. What do you understand -- the 13 discrimination -- sex discrimination, does that 14 encompass expressing a preference for male employees 15 over female employees? 16 MS. KAPPELMAN: Object to the form of 17 the question. You're asking him to come to a legal 18 conclusion. 19 Are you asking him what the training 20 says? 21 BY MR. GOODMAN: 22 Q. Everything is based on the training, sir. 23 MS. KAPPELMAN: You're asking him a 24 legal conclusion. So you can ask him what the 25 training says or what he understands.</p> <p style="text-align: right;">Page 46</p>	<p>1 A. You have to repeat the question. I only 2 caught "August 19th." 3 Q. How many conversations did you have with 4 Emily in August 2019? 5 A. I don't understand your question. I had 6 conversations with people all the time. So if 7 you're looking for a specific number, I don't know. 8 I can't answer that. 9 Q. I'm sorry. Did you say the Velarde 10 complaint was solicited -- requested to be put in 11 writing? 12 A. Sorry, Bob. I didn't -- 13 Q. Did you or Mr. Witte request that 14 Mr. Velarde put any complaint in writing? 15 A. I did not. 16 Arron had reached out to me, though, in -- 17 a couple of times. He had called me a couple of 18 times. I had touched base with him. And he had 19 sent some emails as well, just in terms of his 20 interactions with Emily, which were not positive. 21 Q. Okay. But you don't recall asking -- apart 22 from Mr. Witte, you don't recall asking Mr. Velarde 23 to put anything in writing; correct? 24 A. I don't recall. I know he had sent me -- 25 reached out to me directly, asking to not involve</p> <p style="text-align: right;">Page 48</p>
<p>1 BY MR. GOODMAN: 2 Q. Based on the training, is it your 3 understanding that discrimination encompasses -- sex 4 discrimination encompasses expressing preference to 5 a female over male employee? 6 MS. KAPPELMAN: Female over male, or 7 male over female? 8 MR. GOODMAN: Male over female. 9 Excuse me. 10 A. Sexual harassment training doesn't -- it 11 doesn't discuss, you know, who you hire. It doesn't 12 discuss whether we hire males or females. 13 Q. It doesn't discuss -- it doesn't address -- 14 also address sex discrimination, only sexual 15 harassment? 16 A. The purpose of the training is sexual 17 harassment. 18 Q. Have you ever gotten any sex discrimination 19 or other discrimination training at Wayfair? 20 A. Just sexual harassment training. 21 Q. How much interaction did you have with 22 Emily in August 2019? 23 MS. KAPPELMAN: Object to the form of 24 the question. 25 If you can quantify it, Kory.</p> <p style="text-align: right;">Page 47</p>	<p>1 Emily in projects in his building, which -- yes. 2 Q. Do you know if Mr. Witte requested him to 3 put anything in writing? 4 A. I don't know. I can't answer for Matt. 5 Q. Had anybody -- did either you or Mr. Witte 6 request a woman named Christa Cabriaes to put a 7 complaint in writing? 8 A. I've never heard that name before in my 9 life. 10 Q. What about a person named Jonathan Marcoux, 11 M-A-R-C-O-U-X? Did either you or Mr. Witte request 12 Mr. Marcoux to put something in writing? 13 A. I don't know Mr. Marcoux. Never met him, 14 never seen the name before. 15 Q. Did you discuss the proof of a written 16 complaint by Arron Velarde with Mr. Witte? 17 A. I had discussions with Arron regarding his 18 interactions with Emily. 19 MR. GOODMAN: Objection to 20 responsiveness. 21 BY MR. GOODMAN: 22 Q. Did you ever discuss a written complaint 23 with him or with Mr. Witte? 24 A. I discussed with both, yes. 25 Q. His written complaint?</p> <p style="text-align: right;">Page 49</p>

<p>1 A. His -- no, not the final formal complaint 2 that was submitted. But complaints in general, yes. 3 Q. Did you make any effort to determine the 4 truthfulness of the -- what you're calling the final 5 written complaint by Mr. Velarde? 6 A. Yes, absolutely. 7 Q. How did you -- how did you try to verify 8 the truthfulness of his communication? 9 A. I spoke very openly with Kelly Brieg, who's 10 Emily's project manager that was managing a sorter 11 project in Lathrop, and they spoke to Emily directly 12 about her unwillingness to share project schedules 13 with our operations partners. 14 (Clarification requested by the court 15 reporter.) 16 MS. KAPPELMAN: How do you spell that, 17 Kory? 18 THE WITNESS: It B like Bravo, Romeo, 19 India, echo, gulf. 20 MS. KAPPELMAN: B-R-I-E-G. 21 THE WITNESS: Correct. 22 BY MR. GOODMAN: 23 Q. Did you talk with Mr. Velarde about Davina? 24 I'm forgetting her last name right now. Davina. 25 Anybody named Davina?</p> <p style="text-align: right;">Page 50</p>	<p>1 A. Jeff Neuharth is a senior project manager 2 that was reporting to Emily. 3 Q. I apologize. 4 Did you ever talk with Jeff Neuharth about 5 Emily? 6 A. No. Not that I recall. 7 Q. Did you and Mr. Witte request that he put 8 any statement in writing? 9 A. I did not. 10 Q. Who is Melissa Malik? 11 A. Melissa Malik is an operations regional 12 director. 13 Q. Did you ever communicate with Emily 14 concerning Ms. Malik? 15 A. I spoke to Emily about Melissa, and I've 16 spoken to Melissa about Emily. 17 Q. Did you ever talk with Allan Lyall about 18 Emily? 19 A. Yes. 20 Q. What was the subject of any conversation 21 with Emily about that? 22 A. It was around schedules and not providing 23 dates, firm dates, and also not supporting the daily 24 peak readiness calls. Emily had decided that she 25 was not going to attend the meetings because it was</p> <p style="text-align: right;">Page 52</p>
<p>1 A. I did not -- Davina was an employee, an 2 associate before I started at Wayfair. 3 Q. Did Mr. Velarde's statement refer to Davina 4 in any way? 5 A. His formal statement may have had Davina in 6 there. 7 Q. And you're not aware of anybody making an 8 effort to verify the truthfulness of his statement 9 to the extent it referred to Davina; correct? 10 A. Correct, yeah. 11 Q. Do you know a person name Jeff Neuharth? 12 A. Yes. Jeff is her -- one of her senior 13 project managers. He's still working with 14 Walmart -- I'm sorry, with Wayfair, and he's on our 15 team today. 16 Q. Did you and Mr. Witte ever discuss a woman 17 name Christa Cabriaes, C-A-B-R-I-A-L-E-S? 18 MS. KAPPELMAN: Asked and answered. 19 You can answer again, Kory. 20 A. I've never heard of her name before until 21 now, so the answer is no. 22 Q. Who is Jeff Neuharth? 23 MS. KAPPELMAN: We just went over 24 this. 25 But you can go over it again, Kory.</p> <p style="text-align: right;">Page 51</p>	<p>1 a waste of her time. 2 Q. A meeting with who? 3 A. This was the daily readiness calls with 4 Melissa. I asked Emily to -- this was early on. 5 This was August the 27th, going back to the 27th. I 6 asked Emily to participate in daily scheduled calls 7 to provide updates to her operations partners, and 8 she pretty much refused to attend the meetings. She 9 deleted the -- the series of meetings. And when she 10 finally got on three days later after Mel had called 11 Matt and myself and complained about not having 12 support, Emily basically told Melissa that she 13 doesn't have time for the meeting, even though I had 14 asked her three times to attend. 15 Q. Who is Victor Davis? 16 A. Victor Davis was the West Coast regional 17 director of operations. 18 Q. Do you know whether Victor Davis had any 19 prior dealings with Mr. McDole? 20 A. Well, Victor Davis was the regional 21 director for the West Coast, Arron Velarde reported 22 to Victor, and Mike McDole reported to Arron. 23 MR. GOODMAN: Object to 24 unresponsiveness. 25 BY MR. GOODMAN:</p> <p style="text-align: right;">Page 53</p>

<p>1 Q. Was there any prior -- were there any prior 2 dealings between McDole and Victor Davis, if you 3 know?</p> <p>4 A. I'm not aware, no.</p> <p>5 Again, my history goes back seven weeks 6 total of interaction.</p> <p>7 Q. Was Mr. Velarde ever on paternity leave 8 when he was at Wayfair and you were also at Wayfair?</p> <p>9 A. Yes.</p> <p>10 Q. Do you know how many face-to-face dealings 11 Ms. Forsythe had with Mr. Velarde before he went on 12 paternity leave?</p> <p>13 A. I did not know Arron before he went on 14 paternity leave.</p> <p>15 Q. So you don't know the answer to my 16 question, necessarily?</p> <p>17 MS. KAPPELMAN: No. I think it's 18 pretty clear that he doesn't know how many face-to- 19 face meetings Mr. Velarde had with Ms. Forsythe 20 before he went on paternity leave because he's never 21 met Mr. Velarde and he wasn't involved in the 22 meetings.</p> <p>23 Q. Do you believe that his paternity leave was 24 before you started?</p> <p>25 A. When I first knew of Arron Velarde, it was</p> <p style="text-align: right;">Page 54</p>	<p>1 Q. Did he tell you how many dealings he had, 2 how many face-to-face interactions he had with Emily 3 before he went on leave?</p> <p>4 A. He did not.</p> <p>5 Q. Did you ever talk with Brian McCormick 6 about Emily?</p> <p>7 A. Only when Matt had requested feedback on 8 Emily from Brian.</p> <p>9 Q. So Matt requested him to give a statement?</p> <p>10 A. Yes.</p> <p>11 Q. Have you told us about -- do I recall you 12 only asked one person to give a statement and that 13 any other statements that were requested were 14 requested by Mr. Witte?</p> <p>15 A. I was not requesting people to provide 16 statements other than what I provided myself and was 17 documenting myself. I did not solicit people for 18 feedback.</p> <p>19 Q. Okay. Did Emily ever address with you by 20 email her dealings with Ms. Thunder, which I've told 21 you she was having communicating?</p> <p>22 MS. KAPPELMAN: Object to the form of 23 the question.</p> <p>24 You can answer if you understand it.</p> <p>25 A. I'm not quite sure I understand, like,</p> <p style="text-align: right;">Page 56</p>
<p>1 regarding the sorter project and Emily not sharing 2 the schedule with his team. He was on paternity 3 when I got involved with trying to understand the 4 deliverables for Lathrop. That's when I was 5 introduced to Arron for the first time. And he was 6 off on maternity leave -- paternity leave, sorry. 7 And he was still engaging via email and phone calls, 8 even though he was off, technically.</p> <p>9 Q. And he didn't tell you what his dealings 10 with Emily had been before he went on leave?</p> <p>11 A. I did not know him before he went on leave.</p> <p>12 Q. All right. But he didn't tell you about 13 what the dealings with her had been before he went 14 on leave in your conversation with him; is that 15 correct?</p> <p>16 A. He had described some interactions with 17 Emily that were not favorable: that she was 18 condescending and noncooperative, not collaborative, 19 not sharing information, intentionally withholding 20 information. That is the -- one of my first 21 dealings with Arron was him describing his 22 interactions with Emily.</p> <p>23 MR. GOODMAN: Object to 24 responsiveness.</p> <p>25 BY MR. GOODMAN:</p> <p style="text-align: right;">Page 55</p>	<p>1 the --</p> <p>2 Q. Did Emily ever describe in writing 3 difficulty she was having communicating with 4 Ms. Thunder?</p> <p>5 A. No. Not to me, no.</p> <p>6 Q. Ms. Forsythe recalls that in your first 7 conversation with her after she told -- 8 (Indecipherable).</p> <p>9 (Clarification requested by the court 10 reporter.)</p> <p>11 BY MR. GOODMAN:</p> <p>12 Q. Ms. Forsythe has recollected that you asked 13 her what she made and then made a remark about 14 people at Walmart that might be interested in coming 15 over to Wayfair that were not going to work for less 16 than 135. "I only have your L6 spot left to figure 17 this out."</p> <p>18 MS. KAPPELMAN: "I only have your L6 19 spot to figure this out," is what he said.</p> <p>20 BY MR. GOODMAN:</p> <p>21 Q. Did you say that to her, or words to that 22 effect?</p> <p>23 A. No. Absolutely not. And she's an L5. I 24 was an L6.</p> <p>25 Q. You were what?</p> <p style="text-align: right;">Page 57</p>

<p>1 A. I am an L6. I was hired as an L6. 2 Q. Did you say that about an L5 position? 3 A. She was an L5. I wouldn't ask her for what 4 she makes when I have access to that information in 5 Workday. 6 Q. And was this -- the first day you spoke 7 with her, how close was that to the first day you 8 actually worked at Wayfair? Or was it the first 9 day? 10 MS. KAPPELMAN: Asked and answered. 11 A. It was one week after. I met her one week 12 to the day after. 13 Q. Had you looked at Workday to look up 14 people's salaries during any part of the prior week? 15 A. No. 16 Q. I'm putting up a document that starts with 17 Wayfair 1275, and it identifies you as a 18 contributor. Did you help write that? 19 A. Yes. 20 Q. And why did you help write that? 21 A. I was documenting the interactions, as I 22 stated, because we were going to have a sit-down 23 with the talent management team to determine what 24 the next steps were to address the behaviors and the 25 performance issues.</p> <p style="text-align: right;">Page 58</p>	<p>1 A. This was -- I believe I started to write 2 this around the 16th of September, but I had 3 documented -- 4 Q. The first day that -- 5 MS. KAPPELMAN: Please don't interrupt 6 Kory. I really would like him to finish his 7 complete answer. 8 BY MR. GOODMAN: 9 Q. Are you finished? 10 MS. KAPPELMAN: You said you had 11 documented it, and then you got cut off. 12 A. These were documented interactions. I 13 believe I started to collect all of this information 14 the week of the 16th. 15 Q. But the information you record on the first 16 page of this exhibit is dated back to August 27th; 17 is that correct? 18 A. It's correct that the date of the incident 19 was August 27th. But that -- all of the information 20 was there. It was a matter of just collecting 21 information. 22 Q. Right. So you were collecting -- so you 23 were accumulating information between the 27th and 24 the week of the 16th; correct? 25 A. The system is a repository of information.</p> <p style="text-align: right;">Page 60</p>
<p>1 Q. Okay. And this is -- when was this 2 written? 3 A. This was written around the week of the 4 16th. 5 Q. September 16th; right? 6 A. Yes. 7 MR. GOODMAN: I'll make this 8 Exhibit 2. This is 1275 through 1289. 9 (McKnight Exhibit 2, document Bates- 10 stamped Wayfair 1275 through 1289, marked for 11 identification.) 12 BY MR. GOODMAN: 13 Q. Did anybody request you to put this thing 14 together? 15 A. I was documenting the interactions. 16 Q. Did anybody request you and Mr. Witte to 17 create this document? 18 A. No. This was something that Matt and I 19 were putting together as the performance and the 20 behaviors were becoming, quite honestly, more 21 difficult to -- every day it was a big challenge for 22 the team, and we needed to have a formal sit-down to 23 decide what was best for Emily. 24 Q. When was the first day you say you started 25 collecting this information?</p> <p style="text-align: right;">Page 59</p>	<p>1 It collects the data by its very nature. I was 2 simply collecting some pieces of this that were 3 demonstrating the unprofessional and condescending 4 behavior, and that's what the purpose of this 5 document was. It was a collection of interactions. 6 Q. And the information that you were 7 collecting started -- the first entry -- the first 8 such piece of information was as of August 27th; 9 correct? 10 A. That's when I saw the first real, you know, 11 warning signs is what I stated. 12 Q. And that was at -- and that was about 13 13 days after Emily had made her formal complaint of 14 sexual harassment and other misconduct by 15 Mr. McDole; correct? 16 A. That is correct. 17 Q. Did Mr. McDole ever move his residence to 18 California from Texas? 19 A. I don't know. I didn't really know Mike 20 McDole at all. 21 Q. Do you know if he ever got what I gather is 22 called a "relocation bonus" at Wayfair? 23 A. I don't know. That was before my time. 24 Q. Before you first met with Emily -- strike 25 that.</p> <p style="text-align: right;">Page 61</p>

<p>1 On August 17th when you had that 2 conversation with Emily where you say she drove to a 3 facility where you were at, Mr. Witte had informed 4 you of her sexual harassment complaint; correct? 5 A. Are you referring to September 17th? I 6 think you said August the 17th. 7 Q. Let me restate that, then. 8 Yeah, September 17th you knew about the 9 sexual harassment complaint, that it was made in 10 August; correct? 11 A. I did, yes. 12 Q. And when did you first know that? 13 A. Matt and I were traveling. I believe it 14 was the third week I had joined Wayfair. We were 15 traveling in the UK together at another site. Matt 16 had shared a document with me that Emily had 17 prepared. It was really, really late, probably 18 after midnight, before I first read it. And when we 19 met in the morning, we both agreed that we needed to 20 escalate this to talent management together. And so 21 we scheduled that appointment that morning, and we 22 had a discussion with them late -- very late our 23 time in the UK. 24 Q. And sometime in August 2019 after that 25 occurred, you told Emily that what was described as</p> <p style="text-align: right;">Page 62</p>	<p>1 MS. KAPPELMAN: Asked and answered. 2 You and answer again, Kory. 3 A. I completely stayed out of the topic. It 4 was not in my hands. It was in the hands of the 5 talent management team. And my focus was on 6 delivering the projects that were in front of us. 7 And Emily did not appear to be distracted 8 by the investigation. And I know for a fact that 9 she had thanked Matt for escalating it to talent 10 management. 11 MR. GOODMAN: Okay. Object to 12 responsiveness. 13 BY MR. GOODMAN: 14 Q. So you're saying -- what I'm hearing is 15 that sometime between September 17th -- excuse me -- 16 August 14th and August 27th, you think that 17 Ms. Forsythe began to conduct herself in a way that 18 was objectionable? 19 MS. KAPPELMAN: Object to the form of 20 the question. 21 You can answer, Kory. 22 A. Yes. So that would have been my third 23 week, roughly -- third to fourth week with the 24 company is when I started to see some challenges 25 with her just taking some simple direction.</p> <p style="text-align: right;">Page 64</p>
<p>1 having been done by Mr. McDole was either disgusting 2 or despicable; correct? 3 A. That is not correct. 4 Q. Did you tell Emily that you had any -- did 5 you express any opinion of the alleged sexual 6 harassment -- excuse me -- unconsented touching and 7 bullying by Mr. McDole? 8 A. I did not. I never had any discussion with 9 Emily about the accusations. That was only with the 10 talent management team. 11 Q. So if she said that you said that it was 12 disgusting or despicable, intolerable, you would 13 deny that? You deny that; correct? 14 A. That's correct. 15 Q. Did you think it was disgusting, 16 despicable, or inappropriate, what was described 17 as -- the conduct of his that was described? 18 A. I thought it was completely inappropriate 19 if it were absolutely true, and that's why we 20 escalated it to talent as soon as we found out. We 21 did not wait, even though we were overseas. 22 Q. But you never expressed any sympathy to her 23 about the conduct by telling her that you thought it 24 was inappropriate or disgusting or despicable; 25 correct?</p> <p style="text-align: right;">Page 63</p>	<p>1 Q. Are you aware of any -- anything that -- 2 anything in her life, personal or work life, after 3 she made her formal complaint, sex discrimination 4 and sexual harassment, to conduct herself sometime 5 over the course of the next 12 days prior to 6 August 27th in a different way than she had before? 7 MS. KAPPELMAN: I'm going to object to 8 the question. I'm not even sure I understand what 9 it is. It meandered for a while. 10 So what is it you're asking, Bob? 11 BY MR. GOODMAN: 12 Q. Do you know anything in Emily's personal 13 life or work life that would have led to her 14 conducting herself in a different way after 15 August 14th but prior to August 27th when you say 16 you started taking notes on her? 17 A. So the system was obviously documenting 18 interactions. Again, I went back and collected 19 information in September. The intent was not to 20 document interactions. Those were, by default, 21 systematically available. 22 I did not see any noticeable difference in 23 Emily's behavior after the fact. I believe even 24 three-plus weeks in, she sent me a text saying how 25 happy she was that I was on the team, and she felt a</p> <p style="text-align: right;">Page 65</p>


<p>1 great amount of stress relief. And I did provide 2 that to Lynn.</p> <p>3 MR. GOODMAN: Object to 4 responsiveness.</p> <p>5 BY MR. GOODMAN:</p> <p>6 Q. Are you aware of anything in her personal 7 or work life which would have led her to engage in 8 conduct subject to criticism in late -- beginning in 9 late August 2019 of a kind she had not previously 10 perceived?</p> <p>11 (Clarification requested by the court 12 reporter.)</p> <p>13 BY MR. GOODMAN:</p> <p>14 Q. Was there anything in her personal or work 15 life that you know that happened between August 14th 16 and August 27th that would have led to her suddenly 17 being criticized for her manner of communication?</p> <p>18 MS. KAPPELMAN: Object to the form. 19 She wasn't suddenly criticized.</p> <p>20 But go ahead, Kory.</p> <p>21 BY MR. GOODMAN:</p> <p>22 Q. If you know.</p> <p>23 A. Yeah. I saw no noticeable change in how 24 Emily was, you know, basically conducting business 25 until we had an opportunity to start participating</p> <p style="text-align: right;">Page 66</p>	<p>1 team, was asking -- a woman on his team who was, 2 like, very similar to you. You know what happened 3 to her? She left the team."</p> <p>4 Did you say that to her on September 11th?</p> <p>5 A. No.</p> <p>6 Q. You're deny saying anything like that to 7 her on September 11th?</p> <p>8 A. I don't recall saying anything like that.</p> <p>9 Q. Are you denying it, or you just don't 10 recall?</p> <p>11 A. I'm denying it. I don't recall ever saying 12 anything about this matter.</p> <p>13 Q. If the conversation happened on 14 September 10th, would you equally deny it?</p> <p>15 A. Are you saying I had the same 16 conversation --</p> <p>17 Q. No. I'm saying I see that there's -- there 18 was some uncertainty of whether it was the 10th or 19 the 11th. If it was on the 10th, not the 11th, do 20 you also deny saying anything like that?</p> <p>21 A. I deny saying anything, yes, of the such. 22 (Interruption by the court reporter.)</p> <p>23 THE VIDEOGRAPHER: The time is now 24 4:35. We're off record. 25 (Recess taken.)</p> <p style="text-align: right;">Page 68</p>
<p>1 in daily calls and she just refused to follow the 2 simple direction and request to participate in the 3 meetings after three repeated attempts to have her 4 respond to that.</p> <p>5 Q. And when was that, sir?</p> <p>6 A. August the 27th.</p> <p>7 Q. Okay. Again, my question is was there 8 anything that you're aware of -- and the answer may 9 be nothing -- anything you're aware of in her 10 personal or work life that would have caused a 11 change in her approach to work in late August 2019?</p> <p>12 A. I'm not aware of anything in her personal 13 life that could have caused her to behave the way 14 she did.</p> <p>15 Q. Anything in her work life during the 16 same --</p> <p>17 A. Or her personal life.</p> <p>18 And I felt it was inappropriate for me to 19 talk about the investigation that was ongoing as 20 well, so I refrained entirely the entire time.</p> <p>21 Q. Did you have a conversation on 22 September 11th with Emily?</p> <p>23 A. I could have.</p> <p>24 Q. I'll tell you what her recollection is. 25 "McKnight told me he had a woman like me on his</p> <p style="text-align: right;">Page 67</p>	<p>1 THE VIDEOGRAPHER: This is the 2 beginning of Tape 2. Time is now 4:42. Back on 3 record.</p> <p>4 BY MR. GOODMAN:</p> <p>5 Q. Ms. Forsythe was asked by Wayfair's lawyer 6 about a text you sent her in August when you said, 7 "Mike has reached out to me and wants me to call 8 him" -- (Indecipherable).</p> <p>9 (Interruption by the court reporter.)</p> <p>10 BY MR. GOODMAN:</p> <p>11 Q. The text stated, among other things, "Mike 12 has reached out to me and wants me to call him. I 13 know there's some friction. I want to talk to you 14 before I talk to him."</p> <p>15 Do you remember sending that text?</p> <p>16 A. Yes, I do.</p> <p>17 Q. What was the context of you sending that 18 text to Emily?</p> <p>19 A. So Mike had heard that Emily was traveling 20 to the site and reached out to me and asked that she 21 not be involved in his site, and so I wanted to 22 understand why. I understood that there was some 23 history prior. Neither of them got into the 24 details.</p> <p>25 My focus was entirely on keeping it</p> <p style="text-align: right;">Page 69</p>

<p>1 professional and respectful and giving me an 2 opportunity, as a new leader, to come in to make 3 things right for the team, to support Emily, and to 4 support the company. 5 Q. Was this before or after you became aware 6 of her August 14th complaint? 7 A. This was before. This was my first 8 interaction with Mike McDole. 9 Q. Did you end up talking with Ms. Forsythe 10 before you talked with Mike, as contemplated? 11 A. I believe so. I spoke with both of them. 12 Q. Did you speak to her first, as you said you 13 would? 14 A. I might have, yes. 15 Q. Do you remember what she communicated to 16 you? 17 A. She just basically said that they had a 18 relationship prior, and she didn't get into all the 19 details. 20 I wasn't really interested in understanding 21 all of those details, other than the fact that I 22 wanted to support her as a PM, and I wanted him to 23 respect her and what we were doing in his building, 24 which is a Wayfair-owned site. And I wanted to make 25 sure that she was okay with going there and that I</p> <p style="text-align: right;">Page 70</p>	<p>1 with her? 2 A. Yeah. I don't recall. From what I recall 3 there was -- there wasn't any major, you know, 4 conflict of any sort or confrontation that I recall. 5 Q. Okay. And when you told her you had her 6 back, is that when she said that "You've relieved 7 some stress for me. I appreciate it"? 8 A. I think it was -- it was very closely 9 related to that time frame. 10 Q. Did Mr. Witte talk to you about 11 Ms. Forsythe expressing to him that she may want to 12 look for -- transfer to another team within Wayfair 13 in early September? 14 A. Yes, he did. 15 Q. Did he tell you that she -- that that was 16 because of the stress of dealing with Mr. McDole? 17 A. No, he did not say that. 18 I recall having a conversation and 19 providing Emily with feedback from Melissa, and 20 Melissa was not happy that Emily blew off her 21 meetings. I provided that feedback to Emily. She 22 didn't take the feedback very well. And I think 23 shortly after that, it could have been a day later, 24 she was asking Matt to potentially switch teams. 25 MR. GOODMAN: Object to</p> <p style="text-align: right;">Page 72</p>
<p>1 had her back. And that was the essence of the 2 discussion. 3 Q. And you referred to a prior relationship. 4 What did she tell you precisely? 5 A. She told me that they had gone out to lunch 6 one time, and that was it. 7 Q. Gone out to lunch while they were working 8 together at Wayfair? Is that your understanding? 9 A. Yes. That's what she stated. 10 Q. And then you talked to him after that? 11 A. I spoke to him after that and asked that he 12 give me a chance. 13 He complained that Emily was not 14 professional, that she didn't communicate the 15 schedules, and that she was not sharing information 16 with him. 17 And I told him that -- just give me a 18 chance. I will work to make sure that we support 19 him as a partner and that Emily would support the 20 project. 21 And Emily agreed to the same context in 22 discussion, and she traveled out to the site after a 23 discussion I had with both. 24 Q. Do you know anything more about the visit 25 that she made to the site after that conversation</p> <p style="text-align: right;">Page 71</p>	<p>1 responsiveness. I haven't asked a question. 2 BY MR. GOODMAN: 3 Q. Does Wayfair follow a procedure that 4 contemplates counseling and warnings and then a 5 performance improvement plan in that order? 6 MS. KAPPELMAN: Again, I'm going to 7 object. This witness is here in his personal 8 capacity. He's not a 30(b)(6). If you have any 9 questions about Wayfair's policy or progressive 10 discipline policy -- 11 BY MR. GOODMAN: 12 Q. Based on your experience at Wayfair, does 13 it have a policy that contemplates counseling, 14 warnings, other disciplinary notices followed by a 15 performance improvement plan? 16 MS. KAPPELMAN: If you know. 17 THE WITNESS: Sorry, Lynn. What was 18 that? 19 MS. KAPPELMAN: If you know. 20 A. Yeah, no. I mean, the first line of, 21 obviously, interaction is with the supervisors. So 22 the supervisor is there to coach and mentor and 23 support the associates. That's what I'm here for. 24 That's what I was there for her. That's what I was 25 doing the entire time.</p> <p style="text-align: right;">Page 73</p>

<p>1 I think as you progress along that path, if 2 things continue to escalate or become unresolved, I 3 think, you know, the step before, like, you get to a 4 PIP, obviously you have to have documented 5 interactions, and then you have a formal sit-down. 6 At that point, it's really up to talent 7 management whether they think that a PIP is the 8 right tool. They may not chose to go that avenue. 9 They may have more discussions with the employee, 10 the associate, and then give them another 11 opportunity. 12 Q. Yeah. But based on your experience, what 13 is the latter from the first interaction to the most 14 serious prior to termination? What is the latter? 15 MS. KAPPELMAN: I'm going to object. 16 You know, to the extent you want information about 17 Wayfair's policies on progressive discipline, I'm 18 happy to produce a 30(b)(6) witness. That's not 19 this guy. He's here -- 20 (Multiple parties speaking.) 21 Let me finish with my objection. 22 He's here in his individual capacity 23 based on his personal knowledge as a manager in this 24 case, not his knowledge of Wayfair's performance 25 improvement planning system.</p> <p style="text-align: right;">Page 74</p>	<p>1 with the immediate supervisor. If things don't 2 improve, the next step would be to have a formal 3 review and sit down and go through the 4 documentation, at which point I think the -- before 5 termination would come a PIP. So a performance 6 improvement plan would be the next step, 7 effectively. 8 Q. So there's no -- are you aware of whether, 9 based on your training and experience, Wayfair 10 provides any disciplinary actions, written 11 disciplinary actions, prior to what you're calling 12 the formal review and PIP? 13 MS. KAPPELMAN: Again, this fellow is 14 not in HR at Wayfair. It's not a 30(b)(6) 15 interview. He is just a manager who's been there 16 for 12 months and may or may not know about 17 Wayfair's procedures and policies and formal 18 disciplinary procedures. 19 So, Kory, with that, whatever you 20 know. 21 MR. GOODMAN: If he doesn't know, he's 22 perfectly free to state it. 23 BY MR. GOODMAN: 24 Q. Based on your training and experience, is 25 there a step between coaching and what you're</p> <p style="text-align: right;">Page 76</p>
<p>1 BY MR. GOODMAN: 2 Q. Have you, since coming to Wayfair, had to 3 address performance management issues? 4 A. I've never put anyone on a PIP in my 5 career, no. 6 Q. What do you understand is Wayfair's 7 approach to performance management based upon 8 training and experience at Wayfair since you 9 started? 10 MS. KAPPELMAN: Same objection. This 11 is more appropriate for a 30(b)(6) witness. 12 MR. GOODMAN: I can ask him -- 13 Counsel, I can ask him about his own training, and I 14 can certainly ask about his own experience. So 15 that's -- I'm limiting it to that right now. 16 BY MR. GOODMAN: 17 Q. What is your understanding of the latter of 18 performance management from least intervention to 19 termination at Wayfair based upon your training and 20 experience at Wayfair? 21 MS. KAPPELMAN: Same objection. 22 You can answer, Kory. Whatever you 23 know. 24 A. Sure. My understanding is obviously 25 coaching, like I said. First line of interaction is</p> <p style="text-align: right;">Page 75</p>	<p>1 calling a formal review that involved a written 2 disciplinary notice? 3 A. Not that I'm aware of. 4 And even when I spoke to talent management 5 toward the end of September, the week of the 16th, 6 there was no mention of a formal written action 7 taken. 8 Q. Okay. What was discussed the week of the 9 16th of being a possible performance management 10 step? 11 A. What was discussed was the opportunity to 12 have a sit-down and review the documentation. 13 Q. Okay. And you never scheduled that with 14 Emily; correct? 15 A. I did not. 16 Q. And you're not aware of Mr. Witte doing so; 17 correct? 18 A. I'm not aware of that, and I don't 19 believe -- 20 (Multiple parties speaking.) 21 MS. KAPPELMAN: Let him finish his 22 answer, Bob. He hadn't finished his answer. 23 A. It was not scheduled, to my knowledge. 24 Q. Did you ever tell Emily that negative 25 comments were being solicited from other Wayfair</p> <p style="text-align: right;">Page 77</p>

<p>1 employees about her -- that statements critical of 2 her were being solicited from other Wayfair 3 employees? 4 A. I had told her that I had received feedback 5 on her performance on the 17th of September. 6 Q. You told her that you had written feedback 7 or just feedback generally? 8 A. Just feedback that I'd received from other 9 peers and leaders. 10 Q. You didn't tell her that you had written 11 statements; correct? 12 A. I don't recall if I did. It was in the 13 same meeting that she came in and was very upset and 14 surprised me with her behavior. 15 Q. Right. And you didn't tell her that any 16 statements, written statements, has been solicited 17 therefore; correct? 18 A. No. 19 And, again, I was documenting the 20 interactions. They were documented systematically. 21 It was just -- I was collecting the interactions 22 myself. I was not soliciting. 23 Q. Did you ever criticize Mr. Witte for 24 soliciting statements? 25 A. I did not.</p> <p style="text-align: right;">Page 78</p>	<p>1 A. I believe so, yeah. This is delaying the 2 sorter installation in Lathrop, which is what the 3 site was asking for. 4 Q. Okay. And did you end up delaying that? 5 A. Yes, it was delayed. 6 Q. Okay. And Mr. Velarde wanted it to be; 7 correct? 8 A. Yes. It was to help the operation move 9 their outbound receiving function, which Emily 10 was -- 11 Q. Why did Mr. Velarde want it delayed? 12 A. Because he was operating in the space. 13 Q. And why did you approve it being delayed? 14 A. Because it wasn't necessary to be installed 15 when the schedule was originally documented to be 16 installed -- detailed to be installed. It wasn't 17 critical that the project went live on the date that 18 it was scheduled to go live, so we were working with 19 the site to push the date out. I think it may have 20 been a couple of weeks. It wasn't substantial. 21 There was an unwillingness on Emily's part 22 to delay the schedule at all, and that was the rub 23 that the operations team did not like. And she just 24 was not being -- yeah, she was just not being a good 25 business partner.</p> <p style="text-align: right;">Page 80</p>
<p>1 Matt was aware of the behavioral problems 2 all along. I spoke very openly with Matt, and 3 sought his understanding and guidance as well. So 4 he was very informed of the interactions and 5 witnessed them himself. 6 Q. Do you remember a situation where 7 Mr. Velarde wanted a system installed in the Lathrop 8 facility and Ms. Forsythe expressed a concern of the 9 cost that it was going to -- that Wayfair was going 10 to incur to change some equipment? 11 A. Yes, I'm aware of the cost -- the change 12 order that she was able to provide for delaying the 13 system installation. 14 Q. And did you then approve the change that 15 she was concerned about the cost of? 16 A. I don't recall I had access at that time to 17 approve POs. I don't believe I did. I think that 18 was still going through Matt at the time. I 19 didn't -- I questioned the value that she was 20 suggesting. I don't believe we even paid what the 21 vendor was -- she claimed was asking for that delay. 22 Q. I'm not -- is this the same issue that 23 there was -- where she objected that there was going 24 to be a cost of hundreds of thousands of dollars to 25 make a change? Are we talking about the same issue?</p> <p style="text-align: right;">Page 79</p>	<p>1 MR. GOODMAN: I didn't ask a question, 2 sir. Object to responsiveness. 3 BY MR. GOODMAN: 4 Q. Did you have any in-person dealings with 5 Mr. McDole before Emily was terminated? 6 MS. KAPPELMAN: Object to the form of 7 the question. 8 You can answer, Kory. 9 A. I just met him one time at a directors' 10 meeting in Boston. It would have been around my 11 third week with the company. It was very brief. I 12 spoke to him for two minutes as we were introducing 13 ourselves to a number of people. That was the only 14 time I had met Mike in person. 15 Q. Have you had any direct interactions with 16 him since? 17 A. Yes. We support his site, and we're doing 18 several million dollars of equipment installation in 19 his building. 20 Q. What is your overall assessment of 21 Mr. McDole based on your dealings with him since 22 Emily was terminated? 23 A. He's a site director for the Perris II 24 building. Seems to be doing a fine job. 25 Q. Did Mr. Witte ever express concerns</p> <p style="text-align: right;">Page 81</p>

<p>1 about -- his concerns about Mr. McDole's 2 psychological stability to you? 3 A. No. 4 Q. Who was managing Mr. McDole in September 5 2016? 6 A. That was before my time. I don't know. 7 Q. Do you know who Glenn Roberts is? 8 A. Can you repeat the name? 9 Q. Do you know of the name Glenn Roberts? 10 A. I do not. 11 Q. Kyle Hester? 12 A. Yes. 13 Q. Who is Kyle Hester? 14 A. Kyle Hester is vice president of MHS 15 Global, which is one of the vendors that Wayfair 16 does a lot of MAG business with. 17 Q. What is M and G? 18 A. MHS. It's the name of the material 19 handling -- 20 Q. You said M and G business? 21 A. No. MAG: material handling equipment. 22 Q. Mr. McKnight, are you aware that Mr. McDole 23 made remarks suggesting that he was ready to fight 24 Mr. Hester? 25 A. I am not.</p> <p style="text-align: right;">Page 82</p>	<p>1 Q. You don't remember any Slack conversations 2 in which Mr. Witte suggested that somebody should 3 not go to HR? 4 A. For what purpose? I need to understand 5 what the content is. 6 Does Matt joke on Slack? I'm sure he does. 7 But I don't know what you're specifically referring 8 to. 9 Q. How is Slack used at Wayfair? Is it on a 10 daily basis? 11 A. Slack is one of the primary tools that the 12 teams use to communicate. 13 Q. Is it used in preference to an email to 14 communicate with others on your team? 15 A. My preference is to talk on the phone. 16 Slack is a tool. It's one of many tools. 17 It's fast. Faster than waiting for email responses. 18 If I need something quicker, I'd call people 19 directly. 20 We'll also use text -- text numbers with 21 our cell phones. 22 Q. Did you ever observe any horseplay at 23 Wayfair meetings in which one male attempted to -- 24 or pretended to try to be kissing another male? 25 A. Never.</p> <p style="text-align: right;">Page 84</p>
<p>1 MS. KAPPELMAN: Bob, do you need a 2 break or anything? 3 MR. GOODMAN: I'm going through my 4 notes. I may have some questions. 5 MS. KAPPELMAN: Okay. 6 BY MR. GOODMAN: 7 Q. Have you seen the charges of discrimination 8 which Ms. Forsythe filed? 9 A. The only document that I had seen was the 10 one that was published in the Boston Globe. 11 Q. Have you been to any Wayfair team dinners 12 where people got drunk? 13 A. Where people got work? 14 Q. Drunk. 15 MS. KAPPELMAN: Drunk. Where people 16 got drunk at a Wayfair dinner. 17 A. If they were -- I'm not aware if they were. 18 Possibly. I mean, I don't recall. 19 Q. Did Mr. Witte ever contribute to a Slack 20 conversation at Wayfair where he made -- he joked 21 about somebody going to HR? 22 MS. KAPPELMAN: Object to the form. 23 If you understand that question, Kory, 24 go ahead and answer it. 25 A. I don't.</p> <p style="text-align: right;">Page 83</p>	<p>1 Q. How would you regard that if you observed 2 it at a Wayfair meeting? 3 MS. KAPPELMAN: Object to the form of 4 the question. It's a hypothetical question, which 5 is not appropriate for a lay witness. 6 But go ahead and answer, Kory. 7 A. It depends, I guess. If they're friends 8 and they're joking around, then -- you know, it can 9 be construed as inappropriate. But, I mean, if 10 they're good friends, I mean -- 11 Q. If they did it in front of female 12 employees, would that be inappropriate? 13 A. It's probably not appropriate behavior in 14 general, I would say. It's not professional. 15 Q. Did you expect HR to investigate the sexual 16 harassment complaint of Ms. Forsythe fully? 17 MS. KAPPELMAN: Object to the form of 18 the question. 19 A. Yes. 20 Q. Do you know whether they asked her about 21 who she told about the incidents of sexual 22 harassment and when they occurred? 23 MS. KAPPELMAN: Do you know -- does he 24 know what HR asked Emily? Is that your question? 25 MR. GOODMAN: Yes.</p> <p style="text-align: right;">Page 85</p>

<p>1 A. No. I was not involved, like I said, at 2 all, other than bringing it to HR's attention 3 initially. 4 Q. But you expected that they would perform a 5 comprehensive investigation of the allegations; 6 correct? 7 A. Yes. 8 Q. And that would include verifying the 9 allegations of unconsented touching; correct? 10 A. Correct. 11 MS. KAPPELMAN: Object to the form. 12 BY MR. GOODMAN: 13 Q. Do you know why they would -- do you 14 know -- strike that. 15 Is there any reason that they would limit 16 the investigation insofar as it dealt with 17 unconsented touching? 18 A. Bob, he doesn't know. He wasn't involved 19 in the investigation. 20 Why is this an appropriate question 21 for this witness? I'm really waiting for you to tie 22 this in. He has testified three times he wasn't 23 involved in the investigation. He's not in HR. Why 24 are you asking him those questions? 25 BY MR. GOODMAN:</p> <p style="text-align: right;">Page 86</p>	<p>1 question. 2 BY MR. GOODMAN: 3 Q. Did the training discuss the -- did it 4 indicate that investigations would occur if sexual 5 harassment allegations were made? 6 A. Yes. 7 Q. Did it describe any limitations on those 8 investigations? 9 A. What the training does is it teaches you to 10 observe and identify the signs and what the 11 necessary steps are to escalate that to the talent 12 management team. From that point on, it's up to the 13 talent management team to investigate. 14 MS. KAPPELMAN: All right, Kory, I bet 15 we'll get a question soon. 16 MR. GOODMAN: Pass the witness. 17 MS. KAPPELMAN: I have nothing 18 further. Thank you, Kory, for your time. 19 THE WITNESS: Thank you. 20 MS. KAPPELMAN: Tomorrow is at 11:00; 21 right? 22 MR. GOODMAN: Yes. 23 THE VIDEOGRAPHER: This concludes the 24 deposition. The time is now 5:15, and we're off the 25 record.</p> <p style="text-align: right;">Page 88</p>
<p>1 Q. Sir, do you know any reason why HR would 2 not reach out to every witness to alleged 3 unconsented touching or witness to complaints about 4 alleged unconsented touching? 5 MS. KAPPELMAN: I'm going to direct 6 him to not answer. He's not an HR expert. He's not 7 even an HR representative. He testified he was not 8 involved in the investigation. 9 If you have more questions for this 10 witness based on his personal knowledge, please ask 11 them. But please do not ask him questions that are 12 not based on his personal knowledge, training, or 13 experience. 14 BY MR. GOODMAN: 15 Q. You had your sexual harassment training. 16 We've already talked about that, Mr. McKnight; 17 right? 18 A. Yes. Provided by Wayfair, yes. 19 Q. Did that training talk about investigation 20 of sexual harassment allegations? 21 MS. KAPPELMAN: How to conduct an 22 investigation? Is that your question? Did the 23 training tell you how to conduct an investigation? 24 Is that the question? 25 MR. GOODMAN: No. I'll restate my own</p> <p style="text-align: right;">Page 87</p>	<p>1 I, Kristen C. Krakofsky, court reporter and 2 notary public in and for the Commonwealth of 3 Massachusetts, certify: 4 That the foregoing proceedings were taken 5 before me at the time and place herein set forth, at 6 which time the witness was properly identified by 7 means of an Illinois driver's license and put under 8 oath by me; 9 That the testimony of the witness, the 10 questions propounded, and all objections and 11 statements made at the time of the examination were 12 recorded stenographically by me and were thereafter 13 transcribed; 14 That the foregoing is a true and correct 15 transcript of my shorthand notes so taken. 16 I further certify that I am not a relative 17 or employee of any of the parties, nor am I 18 financially interested in the action. 19 I declare under penalty of perjury that the 20 foregoing is true and correct. 21 of August, 2020. 22  23 Kristen Krakofsky, Notary Public 24 My commission expires October 25, 2024. 25</p> <p style="text-align: right;">Page 89</p>